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Attorneys for Defendants Scottsdale Insurance  
Company and Scottsdale Indemnity Company

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

BANSKO LLC,

Plaintiff,

v.

SCOTTSDALE INSURANCE COMPANY  
and SCOTTSDALE INDEMNITY  
COMPANY,

Defendants.

Civil No.: 3:22-cv-00806-HZ

**DEFENDANTS' ANSWER TO  
PLAINTIFF'S AMENDED  
COMPLAINT**

DEMAND FOR JURY TRIAL

Defendants Scottsdale Insurance Company and Scottsdale Indemnity Company  
(collectively, "Scottsdale," and hereinafter referred to in the singular), by and through its  
attorneys of record, Lloyd Bernstein and Sean P. O'Connor of Bullivant Houser Bailey, PC,  
hereby responds to Plaintiff Bansko LLC's Amended Complaint ("Complaint") as follows:

**Bullivant|Houser|Bailey PC**

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1.

Upon information and belief, Scottsdale admits the allegations set forth in paragraph 1 of the Complaint.

2.

Scottsdale admits that Scottsdale Indemnity Company: (1) issues certain insurance policies covering risks located in Multnomah County, Oregon; (2) is a wholly owned subsidiary of Nationwide Mutual Insurance Company; (3) is licensed by the Oregon Department of Financial Regulation; (4) has its statutory home office at One Nationwide Plaza, Columbus, Ohio 43216; and (5) is authorized to receive service of process at 1127 Broadway Street NE, Ste. 310, Salem, Oregon 97301. Scottsdale further admits that Scottsdale Insurance Company: (1) is a surplus lines insurer; (2) issues certain insurance policies covering risks located in Multnomah County, Oregon; (3) is a wholly owned subsidiary of Nationwide Mutual Insurance Company; (4) has its statutory home office at One West Nationwide Blvd., Columbus, Ohio 43215; and (5) issued policy no. CPS7244544 to Plaintiff for the September 22, 2020 to September 22, 2021 policy period (the “Policy”), which speaks for itself. Scottsdale is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations set forth in paragraph 2 of the Complaint and, therefore, denies the same.

3.

Paragraph 3 of the Complaint contains assertions of law which require no response from Scottsdale. To the extent a response is required, Scottsdale is without knowledge or information sufficient to form a belief regarding the truth of the allegations set forth in

paragraph 3 of the Complaint and, therefore, denies the same.

4.

Scottsdale admits that the circuit courts in the State of Oregon exercised jurisdiction over it in connection with this action. Scottsdale further admits that Multnomah County Circuit Court was a proper venue, but denies that it is the only proper venue. Scottsdale denies the allegations to the extent the same assert that Scottsdale is liable and/or that Plaintiff is entitled to damages or additional coverage under the Policy. Scottsdale is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations set forth in paragraph 4 of the Complaint and, therefore, denies the same.

**RESPONSES TO FIRST CLAIM FOR RELIEF  
(Breach of Contract)**

5.

Scottsdale incorporates by reference its responses to paragraphs 1 through 4 of the Complaint as if set forth fully herein.

6.

Scottsdale admits that the Policy provides Commercial Property coverage for a building located at 6729 SE 162nd Ave., Portland, Oregon 97236 (the “Property”) under certain circumstances, subject to the terms, conditions, limitations, exclusions, and provisions contained in the Policy, which speak for themselves. Upon information and belief, Scottsdale admits that Plaintiff owns the Property and paid certain premiums under the Policy. Scottsdale further admits that portions of the Property sustained loss or damage resulting from the long-term and progressive failure of the roof structure (the “Incident”). Scottsdale is without knowledge or information sufficient to form a belief regarding the truth

of the remaining allegations set forth in paragraph 6 of the Complaint and, therefore, denies the same.

7.

Scottsdale admits that Plaintiff reported the Incident to Scottsdale. Scottsdale is without knowledge or information sufficient to form a belief regarding the truth of the remaining allegations set forth in paragraph 7 of the Complaint and, therefore, denies the same.

8.

Paragraph 8 of the Complaint contains assertions of law which require no response from Scottsdale. To the extent a response is required, Scottsdale admits that it owed those duties prescribed by the Policy and Oregon law. Scottsdale denies Plaintiff's characterizations of Scottsdale's alleged duties.

9.

Scottsdale admits that it has issued no less than \$206,571.11 in indemnity payments under the Policy in connection with the Incident. Scottsdale denies the remaining allegation set forth in paragraph 9 of the Complaint.

10.

Scottsdale denies the allegation set forth in paragraph 10 of the Complaint.

11.

Scottsdale denies the allegation set forth in paragraph 11 of the Complaint.

12.

Scottsdale denies the allegation set forth in paragraph 12 of the Complaint.

**RESPONSES TO SECOND CLAIM FOR RELIEF  
(Breach of the Duty of Good Faith and Fair Dealing)**

13.

Scottsdale incorporates by reference its responses to paragraphs 1 through 12 of the Complaint as if set forth fully herein.

14.

Paragraph 14 of the Complaint contains assertions of law which require no response from Scottsdale. To the extent a response is required, Scottsdale admits that it owed those duties prescribed by the Policy and Oregon law. Scottsdale denies Plaintiff's characterizations of Scottsdale's alleged duties.

15.

Paragraph 15 of the Complaint contains assertions of law which require no response from Scottsdale. To the extent a response is required, ORS 746.230 speaks for itself.

16.

Scottsdale denies the allegation set forth in paragraph 16 of the Complaint.

17.

Scottsdale denies the allegation set forth in paragraph 17 of the Complaint.

18.

Scottsdale denies the allegation set forth in paragraph 18 of the Complaint.

19.

Scottsdale denies the allegation set forth in paragraph 19 of the Complaint.

20.

Scottsdale denies the allegation set forth in paragraph 20 of the Complaint.

## **RESPONSE TO JURY DEMAND**

21.

In response to the allegations set forth in paragraph 21 of the Complaint, Scottsdale admits that Plaintiff demands a jury trial in this case.

### **GENERAL DENIAL**

Scottsdale hereby denies each and every allegation in the Complaint not expressly admitted herein, including Plaintiff's prayer for relief and allegations of damages.

### **AFFIRMATIVE DEFENSES**

Without representing or conceding that any of the following constitute affirmative defenses within the meaning of F.R.C.P. 8(c) or that Scottsdale would have the burden of proof or persuasion with respect to the same, Scottsdale asserts the following defenses and affirmative defenses.

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted, in whole or in part.
2. Scottsdale Indemnity Company is improperly named and identified in this lawsuit because it never issued insurance to Plaintiff and owed no duties to Plaintiff.
3. Plaintiff has failed to take reasonable steps under the circumstances to minimize, avoid or mitigate whatever damages, if any, it may have sustained. In part, Plaintiff is bound the acts or omissions of its agent, NW Claims Management LLC, which did or may have contributed to Plaintiff's failure to mitigate its claimed damages.
4. Plaintiff has failed to submit evidence of and reasonable proof in support of those damages for which it claims a right to recovery in this action.

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5. Plaintiff's claims are subject to, and limited by, the terms and conditions of the Policy, including but not limited to the insuring agreement(s), policy conditions, coverage limits, definitions, endorsements, and exclusions to coverage, and the same are plead herein *in extenso*.

6. Plaintiff's claims may be barred under Section D to the Causes of Loss – Special Form contained in the Policy to the extent it is determined that the Property did not: (1) abruptly fall down or cave in, (2) such that it could not be occupied for its intended purpose, (3) due to decay that was hidden from view and not known to Plaintiff prior to the collapse.

7. Plaintiff's claims may be limited or barred under the Policy by operation of one or more exclusions contained in the Causes of Loss – Special Form, including the ordinance or law exclusion (paragraph B.1.a.), the fungus/rot exclusion (paragraph B.1.h.), the wear and tear exclusion (paragraph B.2.d.(1)), the decay, deterioration, or hidden defect exclusion (paragraph B.2.d.(2)), the settling or cracking exclusion (paragraph B.2.d.(4)), the continuous or repeated seepage exclusion (paragraph B.2.f.), the collapse exclusion (paragraph B.2.k.), the neglect exclusion (paragraph B.2.m.), the weather exclusion (paragraph B.3.a.), and/or the faulty workmanship/inadequate maintenance exclusion (paragraph B.3.c.).

8. Plaintiff's claims may be barred by operation of the Duties In The Event Of Loss Or Damage provisions contained in the Building and Personal Property Coverage Form to the Policy (paragraph E.3.a.) based upon Plaintiff's failure to: (1) provide prompt notice of the loss or damage; (2) take all reasonable steps to protect the property from further damage;

(3) provide inventories of the damaged property; and/or (4) cooperate with Scottsdale in the investigation of the claim. In part, Plaintiff is bound the acts or omissions of its agent, NW Claims Management LLC, which did or may have contributed to Plaintiff's potential breach of paragraph E.3.a.

9. Plaintiff's claims may be limited by operation of the Increased Cost Of Construction provisions contained in the Building and Personal Property Coverage Form to the Policy (paragraph A.4.e.).

10. Plaintiff's claimed entitlement to replacement cost coverage, if any, is subject to the requirements outlined in the Optional Coverages provisions contained in the Building and Personal Property Coverage Form to the Policy (paragraph G.3.).

11. Plaintiff's claimed entitlement to insurance proceeds under the Policy for those losses and damages sustained in the Incident is properly offset by any and all amounts previously tendered by Scottsdale including, but not limited to, the \$206,571.11 issued for: (1) the repair and replacement of the damage sustained to the Property; (2) emergency shoring/bracing work; and (3) certain engineering work.

12. Plaintiff's claims are barred to the extent it is determined that all amounts due and owing under the Policy have been tendered by Scottsdale, as outlined by the Loss Payment provisions contained in the Building and Personal Property Coverage Form to the Policy (paragraph E.4.).

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13. While Scottsdale affirmatively disputes and denies that it has breached the Policy, strictly *arguendo* and in the event a breach is otherwise found, Scottsdale asserts that any such breach was induced, caused, or contributed to by the acts, omissions and conduct of the Plaintiff, thereby relieving Scottsdale from any and all liability.

14. Plaintiff's claimed damages, if any, were the direct and proximate result of the acts or omissions of other parties and/or a third party, including NW Claims Management LLC and/or Umpqua Bank, over whom Scottsdale had no control and for whom Scottsdale is not responsible.

15. Plaintiff is not entitled to recover attorney fees from Scottsdale Insurance Company under ORS 742.061(1) given its status as a non-admitted, surplus lines insurer. *See* ORS 742.001.

Scottsdale reserves the right and respectfully requests leave of Court to assert any additional or appropriate defenses or to delete defenses contained herein following discovery or at trial when the allegations of Plaintiff's Complaint and the issues formulated thereby have become more definite and certain.

WHEREFORE, having answered Plaintiff's Complaint, Scottsdale prays that the Complaint against it be dismissed with prejudice and the relief requested therein denied, for judgment for cost against Plaintiff, and for such other and further relief as the Court may deem just and proper.

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**SCOTTSDALE INSURANCE COMPANY AND SCOTTSDALE INDEMNITY  
COMPANY DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.**

DATED: June 9, 2022

BULLIVANT HOUSER BAILEY PC

By s/ Lloyd Bernstein  
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